

Len. WH

DCI/IC-76-1278
24 March 1976

MEMORANDUM FOR: General Counsel
Legislative Counsel ✓

FROM : USAF (Ret.)
Chief, Coordination Staff, ICS

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SUBJECT : Preparation of PFIAB Presentation

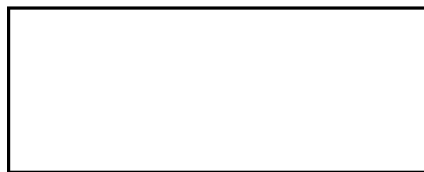
1. The DCI and Deputy Secretary of Defense Ellsworth will meet with the PFIAB from 1030 to 1230 hours on Friday, 2 April.

2. Among the topics which the PFIAB has requested be covered by the DCI are an assessment of (1) the effect on Intelligence Community organization and operations of Executive Order 11905, (2) the Attorney General's procedures and guidelines issued pursuant thereto, and (3) prospective legislation restricting intelligence activities.

3. I will prepare material for the Director on (1), and the DCI has requested that OGC prepare comments on (2) and the OLC comments on (3).

4. The Director intends to devote about five minutes to each of the three topics.

5. It is requested that your material be provided to me by COB Friday, 26 March, for inclusion in the DCI's briefing book.



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LEGISLATIVE ACTIVITY CONCERNING INTELLIGENCE

I. OVERSIGHT

II. RESTRICTIONS ON COVERT ACTION

III. ELECTRONIC SURVEILLANCE

IV. STATUS REPORT ON AGENCY-INITIATED LEGISLATION

A. Sources and Methods

B. Deputy Director for the Intelligence Community

I. OVERSIGHT

Summary: The Senate is moving rapidly to create a new foreign intelligence oversight body. The vehicle is S. Res. 400, which would create a new Senate standing Committee on Intelligence Activities. There are several aspects of this resolution which raise serious problems for the Agency. The resolution may reach the Senate floor within the next month or two. Several oversight proposals have been introduced in the House but no action has been taken.

Background: After extensive hearings the Senate Government Operations Committee drafted and reported S. Res. 400 which would create a new Senate intelligence oversight committee. The resolution has been referred jointly to the Judiciary and Rules Committees. Although the President's preference was for a joint Senate-House committee, the Administration is not opposing the formation of a separate Senate Committee. The new committee's scope of jurisdiction would include all foreign intelligence activities of the Government, plus all the intelligence activities of the FBI. Specifically, the committee's jurisdiction would extend to CIA, all DOD national-level intelligence activities, and the intelligence activities of the Departments of State, Justice, and Treasury.

Problem: The following aspects of the proposed committee's charter are unacceptable:

Exclusivity of Jurisdiction: While making strides toward jurisdictional exclusivity of oversight of intelligence, one section of S. Res. 400 authorizes any Senator to tell any other Senator anything he has learned from the proposed committee or a member thereof.

Disclosure of Information: The resolution asserts the authority of the committee, or the Senate, to publicly disclose any information provided by the Executive branch, even over the objections of the President.

Open Budget: The resolution would require a periodic authorization bill, which would reveal at least the intelligence budget total.

Current Status: S. Res. 400 is pending before the Senate Judiciary Committee until 29 March and before the Senate Rules Committee until 5 April. The Agency has sent a report to the Rules Committee on S. Res. 400 in which we raised the above problems. Assuming the Rules Committee meets its deadline, we expect floor action by early May. The House has been quiet by comparison. Several oversight bills, including proposals for a joint committee, have been introduced in the House, but thus far there has been no movement on these proposals.

II. RESTRICTIONS ON COVERT ACTION

Summary: There have been continuing efforts during the 94th Congress to eliminate or severely restrict covert action. In early summer we expect that there will be an attempt to tack onto the upcoming Defense appropriations bill an amendment to prohibit the expenditure of funds for covert action.

Background: During the 93rd Congress the Senate rejected by a vote of 68-17 a measure introduced by Senator Abourezk which would have prohibited covert actions which violated another country's laws. The House rejected by a vote of 291-108 a similar measure introduced by Representative Holtzman. There have been several bills introduced in the 94th Congress that would either eliminate or severely cripple the Agency's covert action capability; however, these bills are dormant. Examples of the more significant bills introduced are: H.R. 628 (McCloskey) which prohibits all covert action; H.R. 1531 (Holtzman) which prohibits any undermining of foreign governments; and H.R. 12255 (Scheuer) which extends the War Powers Act over the CIA.

Problem: Opponents of covert action have now focused their efforts on tacking amendments onto appropriations bills. The Senate and House adopted the Tunney amendment to the Defense appropriations bill, prohibiting the use of funds in that Act for assistance to pro-Western factions in Angola. On 3 March 1976 the House voted 250-129 to adopt an amendment introduced by Representative John Burton to the foreign aid appropriations bill which prohibits the use of foreign aid funds for assassination or for financing any foreign political activity. This amendment was later adopted by the Senate. The importance of the "Burton amendment" does not lie in its direct impact on Agency operations, because there are no Agency funds in the foreign aid bill. The amendment is important as a precedent and for what it presages for upcoming legislation.

Current Status: Except for the Burton amendment, which will have no direct effect on the Agency and which is pending in Conference, there is no active legislation on covert action. We expect, however, amendments similar to the Burton amendment to be introduced to the Defense appropriations bill which will be under consideration probably in early summer. In addition, the Senate Foreign Relations Committee has said that it would hold hearings on paramilitary action.

III. ELECTRONIC SURVEILLANCE

Summary: Throughout the 94th Congress many bills have been introduced which seek to prohibit warrantless electronic surveillance. Most of these bills are very restrictive and would pose serious problems for the intelligence community. The Administration has developed careful legislation in this field which hopefully will head off the more restrictive proposals. It applies only to electronic surveillance within the United States. It was forwarded to the Congress on 23 March and has been introduced by Senator Kennedy and Representative Rodino.

Background: On 18 March 1976, in a message to the Congress on intelligence activities, the President stated that the Administration would work with Congress to develop legislation to deal with the problems of personal privacy and electronic surveillance. This initiative came in the face of a series of very restrictive congressional proposals to limit electronic surveillance within the United States. After extensive coordination within the Executive branch and consultation with congressional leaders, the Department of Justice developed a bill which would authorize the use of electronic surveillance to obtain foreign intelligence information upon issuance of a court order for that purpose.

The major provisions of the bill would require:

First. That all electronic surveillance in the United States for purposes of obtaining foreign intelligence information be limited to "foreign powers" and "agents of a foreign power," with American citizens being subject to such surveillance only if they are acting "pursuant to the direction of a foreign power."

Second. That for such surveillance to be undertaken, a judicial warrant must be secured on the basis of a showing of "probable cause" that the target is an "agent of a foreign power."

Third. That before a warrant can even be requested, certain designated Executive branch officials must certify in writing to the court that the information sought to be obtained is "foreign intelligence information."

The bill contains an executive disclaimer clause. Thus, if the facts and circumstances leading to the surveillance fall within the scope of the bill, the procedures laid out in the bill will be followed. Beyond that, Congress is not attempting to circumscribe the inherent constitutional power of the President to conduct surveillance in order to obtain foreign intelligence information essential to the national security.

Current Status: The Administration's proposal has already been introduced by Senator Kennedy (S. 3197) and Representative Rodino (H.R. 12750) and has been referred to the respective Judiciary Committees. Action is expected this summer.

IV. STATUS REPORT ON AGENCY-INITIATED LEGISLATION

A. Sources and Methods

On 19 February the President sent to the Congress proposed legislation to protect intelligence sources and methods. Representative Robert McClory immediately introduced this bill as H.R. 12006. Subsequently, Chairman Melvin Price, House Committee on Armed Services, and Representative Bob Wilson introduced H.R. 12161, an identical bill. Both bills have been referred to the House Committee on Armed Services. To date, companion legislation has not been introduced in the Senate. Subsequent to the introduction of the bill by Representative McClory, the Attorney General's office advised the CIA that it had some minor reservations concerning parts of the bill, mostly involving technical and stylistic changes. We are in the process of discussing these reservations with the Department.

Besides this broad proposal for protecting intelligence sources and methods, several Congressmen have introduced bills to protect the identities of intelligence personnel. Senator Bentsen has introduced such a bill on the Senate side, and one such bill in the House, introduced by Representative Michel, has over 50 cosponsors. However, no action has been taken on these bills at present.

B. Deputy Director for the Intelligence Community

The Agency is developing a legislative proposal which would amend the National Security Act of 1947 to create two Deputy Directors of Central Intelligence instead of the one position presently provided for. One would be the Deputy Director for the CIA and the other would be the Deputy Director for the IC. In effect, this legislation would elevate the administratively-created position of "Deputy to the Director of Central Intelligence for the Intelligence Community" to a statutory position at the Deputy Director level.

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